

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION NO. 3:14-CV-00275-RLV-DCK**

<b>ROBIN GENAE ELLERBE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b><u>ORDER</u></b>
	)	
<b>CAROLYN W. COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

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**THIS MATTER IS BEFORE THE COURT** on Plaintiff Robin Ellerbe’s Motion for Summary Judgment (Doc. No. 13), Defendant Carolyn Colvin’s Motion for Summary Judgment (Doc. No. 18), and Judge David Keesler’s Memorandum and Recommendation (the “M&R”) (Doc. No. 22). In the M&R, Judge Keesler recommends that Plaintiff’s Motion be denied, that the Defendant’s Motion be granted, and that the final decision of the Commissioner of Social Security be affirmed. [Doc. No. 22] at p. 11. The parties have not filed objections to the M&R, and the time for doing so has expired. *See* Fed. R. Civ. Pro. 72(b)(2).

## **I. BACKGROUND**

Because neither party has objected to the Magistrate Judge’s statement of the factual and procedural background of this case, the Court adopts the facts and procedural background detailed in the M&R.

## **II. DISCUSSION**

### **A. Standard of Review**

The Federal Magistrate Act provides that a court may “designate a magistrate judge to conduct hearings . . . and to submit . . . proposed findings of fact and recommendations for the

disposition [of dispositive motions.]” 28 U.S.C. § 636(b)(1)(B). “[A] district court shall make a *de novo* determination of those portions of the report or specific proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *accord* Fed. R. Civ. Pro. 72(b)(3). “By contrast, in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72, Advisory Committee Note).

B. Analysis

Under Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), a district court judge shall make a *de novo* determination of any portion of an M&R to which specific written objection has been made. A party’s failure to make timely objection is accepted as an agreement with the conclusions of the Magistrate Judge. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). No objection to the M&R having been filed, and the time for doing so having expired, the parties have waived their right to *de novo* review of any issue discussed in the M&R.

Furthermore, the Social Security Act provides that the “findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive.” 42 U.S.C. § 405(g). Judicial review of the Commissioner’s final decision regarding disability benefits is limited to determining “whether the findings are supported by substantial evidence and whether the correct law was applied.” *Walls v. Barnhart*, 296 F.3d 287, 290 (4th Cir. 2002). The reviewing court should not “undertake to re-weigh conflicting evidence, make credibility determinations, or substitute [its] judgment for that of the Secretary.” *Mastro v. Apfel*, 270 F.3d 171, 176 (4th Cir. 2001) (quoting *Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996)).

After a careful review of the record in this case, the parties' briefs, and the M&R, the Court finds that Judge Keesler's M&R is supported by the record and is consistent with and supported by law. Finding no clear error in either the Commissioner's final decision or the M&R, the Court **ADOPTS** the recommendation of the Magistrate Judge as its own.

### **III. DECRETAL**

#### **IT IS, THEREFORE, ORDERED THAT**

- (1) The Plaintiff's Motion for Summary Judgment (Doc. No. 13) is hereby **DENIED**;
- (2) The Defendant's Motion for Summary Judgment (Doc. No. 18) is hereby **GRANTED**;
- (3) Judge Keesler's M&R (Doc. No. 22) is hereby **ADOPTED** as the decision of this Court;
- (4) The final decision of the Commissioner of Social Security is hereby **AFFIRMED**; and
- (5) The Clerk is directed to administratively terminate this case.

**SO ORDERED.**

Signed: May 11, 2016



Richard L. Voorhees  
United States District Judge

